

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i></p> <p>Debtors.<sup>1</sup></p>	<p>PROMESA Title III</p> <p>Case No. 17 BK 3283-LTS</p> <p>(Jointly Administered)</p>
<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>PUERTO RICO ELECTRIC POWER AUTHORITY,</p> <p>Debtor.</p>	<p>PROMESA Title III</p> <p>Case No. 17 BK 4780-LTS</p> <p>Re: ECF No. 549.</p> <p><b>Urgent Application Relates Only to PREPA and Shall Only Be Filed in Case No. 17 BK 4780-LTS</b></p>
<p>The Financial Oversight and Management Board for Puerto Rico,</p> <p>as representative of</p> <p>Puerto Rico Electric Power Authority,</p> <p>Movant,</p>	

<sup>1</sup> The Debtors in the jointly-administered Title III cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (iv) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

v.

WHITEFISH ENERGY HOLDINGS, LLC, *et al.*<sup>2</sup>

Respondents,

*[Caption continued on next page]*

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<sup>2</sup> The Respondents include: Arc American, Inc., the Ad Hoc Group of General Obligation Bondholders, U.S. Bank National Association in its Capacity as PREPA Bond Trustee, the Ad Hoc Group of PREPA Bondholders, Whitefish Energy Holdings, LLC, Scotiabank de Puerto Rico, Solus Alternative Asset Management LP, National Public Finance Guarantee Corporation, Ambac Assurance Corporation, Assured Guaranty Corp., Assured Guaranty Municipal Corp., Syncora Guarantee Inc., the Official Committee of Unsecured Creditors, Siemens Transportation Partnership Puerto Rico, S.E, and Knighthead Capital Management, LLC.

**OVERSIGHT BOARD'S AND AAFAF'S  
URGENT APPLICATION AND NOTICE OF REVISED  
PROPOSED \$300 MILLION LOAN FROM COMMONWEALTH TO PREPA**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as representative of the Puerto Rico Electric Power Authority (“PREPA”) in this Title III case pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),<sup>3</sup> and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF,” and, together with the Oversight Board, the “Movants”) respectfully submit this joint urgent application requesting approval of a revised proposed \$300 million unsecured, super-prioritized loan from the Commonwealth to PREPA (the “Urgent Joint Application”).<sup>4</sup>

Because time is of the essence, Movants are filing the Urgent Joint Application immediately and scheduling a call with creditors for 11 a.m. (EST) Friday February 16, 2018. We will report to the Court as to whether the call results in an agreement on scheduling any responses and a hearing on the application, subject to the Court’s schedule. It is critical to the Commonwealth to procure an order approving financing no later than Tuesday February 20, 2018.

The Movants respectfully aver as follows:

**I. PROCEDURAL BACKGROUND**

1. Final Hearing on Financing. On February 15, 2018, this Court issued its oral ruling that for reasons explained on the record, it would not grant the *Urgent Joint Motion of the Financial Oversight and Management Board for Puerto Rico and the Puerto Rico Fiscal Agency*

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<sup>3</sup> PROMESA is codified at 48 U.S.C. §§ 2101-2241.

<sup>4</sup> Capitalized terms used but not otherwise defined herein shall have the same meaning given to them in the Postpetition Financing Motion, ECF No. 549.

*and Financial Advisory Authority for Entry of Interim and Final Orders (a) Authorizing Postpetition Secured Financing, (b) Granting Priming Liens and Providing Superpriority Administrative Expense Claims, (c) Modifying the Automatic Stay, (d) Scheduling a Final Hearing, and (e) Granting Related Relief* (the “Postpetition Financing Motion”) [ECF No. 549].

The Court, however, determined not to issue a final order in respect of the Financing Motion, but to enable Movants to submit on short notice a revised, proposed financing on terms the Court observed it might favorably entertain under 11 U.S.C. § 364(c) for a \$300 million unsecured, superpriority loan, which may be followed up subsequently with a larger loan, which may be collateralized if certain showings are made.

2. Critical Timing. As explained at the February 15, 2018 hearing, PREPA’s cash availability is at such a low level that PREPA’s operations are in jeopardy. After the hearing, PREPA began to implement plans to ramp down PREPA’s power production and shut down certain generating units in order to conserve its limited cash resources. This exacerbated the risk to an already fragile system and leaves it vulnerable to outages and resulting in brownouts on the island. Unless PREPA obtains access to additional liquidity by mid-next week, PREPA will be forced to further reduce its load and reduce personnel. This will further jeopardize service to customers and leave many customers without power. Even with \$300 million of postpetition financing PREPA will only be able to continue operation in the ordinary course until late March 2018. Such disruption in the power will lead to increased out-migration, hardship, and fear, resulting in a further weakening of the Commonwealth’s economy and ability to rehabilitate. To avoid these consequences, without delay Movants undertook to revise the proposed financing in accordance with the Court’s ruling (the “Revised Financing”). Movants also undertook to cause a negotiation between PREPA and the Secretary of Treasury of Puerto Rico on the revised terms

of the financing. Commonwealth representatives cooperated in this endeavor, to avoid, on short notice, gravely negative consequences to Puerto Rico, although it remained their preference to protect the Commonwealth and its stakeholders through inclusion of a priming lien.

3. Temporary Solution. Movants anticipate submitting a further request for approval of a larger financing within two to four weeks because the instant proposed financing is projected to be consumed before the end of March 2018. Movants will undertake to justify the terms of any further financing in accordance with the Court's ruling of February 15, 2018.

## **II. REVISED FINANCING**

4. Material Changes to Financing. Attached hereto as **Exhibit A** is a revised proposed credit agreement (the "Revised Credit Agreement"). A redline of the Revised Credit Agreement to the Credit Agreement filed on February 6, 2018 [ECF No. 640-2] is attached hereto as **Exhibit B**. Also attached hereto, as **Exhibit C**, is a revised financing order (the "New Revised Financing Order"). A redline of the New Revised Financing Order to the Revised Proposed Final Order filed on February 14, 2018 [ECF No. 713] is attached hereto as **Exhibit D**.

The material changes in the Revised Financing are:

- a. Principal Amount. Reduced to \$300 million.
- b. Interest Rate. Fixed at 5% per year.
- c. Superpriority. Unchanged.
- d. Collateral. Eliminated.
- e. Good Faith Lender Finding for 11 U.S.C. § 364(e). Eliminated.
- f. Insulation from Attack in the Commonwealth Title III Case. Eliminated.

## **III. ADDITIONAL SUPPORT FOR REVISED FINANCING**

5. Todd Filsinger Declaration. Attached hereto as **Exhibit E** is a declaration from Mr. Filsinger (the "Third Supplemental Filsinger Declaration") providing PREPA's most current

budget<sup>5</sup> showing the need for immediate financing of at least \$300 million and describing his conversation with the Secretary of Treasury of Puerto Rico in which he requested a loan with neither a priming lien nor a superpriority.

6. As the February 15, 2018 hearing demonstrated, PREPA had been unsuccessful in obtaining unsecured credit allowable under 11 U.S.C. 503(b)(1) and no party offered PREPA unsecured financing on terms as or more attractive than the Revised Financing, for the purposes of 11 U.S.C. § 364(c).

#### **IV. REQUEST FOR RELIEF**

7. Based on the evidentiary hearing held on February 15, 2018 and the Third Supplemental Filsinger Declaration, Movants submit the requirements for approval of the Revised Financing have been satisfied and request its approval.

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<sup>5</sup> The updated budget is attached as Exhibit 1 to the New Revised Financing Order attached hereto as Exhibit C.

WHEREFORE the Movants respectfully request the Court to approve the Revised Financing, to issue the New Revised Financing Order, and to grant PREPA such other and further relief as is just.

Dated: February 16, 2018  
San Juan, Puerto Rico

Respectfully submitted,

/s/ Martin J. Bienenstock

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**THE PUERTO RICO FISCAL AGENCY  
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By its attorneys,  
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**Exhibit A**

Revised Credit Agreement

**Exhibit B**

Redline of the Revised Credit Agreement  
to the Credit Agreement filed February 6, 2018 [ECF No. 640-2]

**Exhibit C**

New Revised Financing Order

**Exhibit D**

Redline of New Revised Financing Order  
to the Revised Proposed Final Order filed February 14, 2018 [ECF No. 713]

**Exhibit E**

Third Supplemental Filsinger Declaration